



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 8, 51, and 52

**[FAC 2023-03; FAR Case 2022-007; Item I; Docket No. FAR-
2022-0004; Sequence No. 1]**

RIN: 9000-AO44

**Federal Acquisition Regulation: Removal of FAR Subpart 8.5,
Acquisition of Helium**

AGENCY: Department of Defense (DoD), General Services
Administration (GSA), and National Aeronautics and Space
Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule
amending the Federal Acquisition Regulation (FAR) to
implement the statutory expiration of the Federal Helium
System in accordance with the Helium Stewardship Act of
2013.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF
PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson,
Procurement Analyst, at 202-208-4949 or by email at
michaelo.jackson@gsa.gov, for clarification of content.

For information pertaining to status or publication
schedules, contact the Regulatory Secretariat Division at

202-501-4755 or *GSARegSec@gsa.gov*. Please cite FAC 2023-03, FAR Case 2022-007.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 87 FR 57166 on September 19, 2022, to implement the final disposition of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113-40), which required the disposal of the Federal Helium System by September 30, 2021. The Act required the Department of the Interior (DOI), through the Director of the Bureau of Land Management (BLM), to begin offering helium for auction or sale on an annual basis. Under the Federal In-Kind Program, Federal agencies were required to purchase all of their refined helium from private suppliers who, in turn, were required to purchase an equivalent amount of crude helium from the Federal Helium Reserve.

On April 16, 2020, the BLM announced the process and timeline for disposal of the remaining helium and helium assets to meet the September 30, 2021, statutory deadline. Excess helium and helium assets remaining after September 30, 2021, were transferred to GSA, in accordance with the statutory disposal process. Federal In-Kind users were provided access to helium until September 30, 2022, while GSA completed the disposal process. Federal In-Kind users

are now required to seek new sources of helium on the open market.

II. Discussion and Analysis

There were no public comments submitted in response to the proposed rule, and no changes were made to the final rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This final rule removes FAR clause 52.208-8, Required Sources for Helium and Helium Usage Data; FAR subpart 8.5 - Acquisition of Helium; and other associated language in FAR parts 1, 8, and 51. The final rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

IV. Expected Impact of the Rule

This final rule is not expected to have a significant impact on the Government or industry because the operation of the Federal Helium Reserve ceased on September 30, 2021, and agencies were notified that the Federal In-Kind Program would end on September 30, 2022. Agencies now have to procure helium on the open market as they do for other requirements.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601-612. The FRFA is summarized as follows:

This rule implements the statutory expiration of the Federal Helium System in accordance with the Helium Stewardship Act of 2013 (Pub. L. 113-40). The Helium Stewardship Act required the disposal of the Federal Helium System by September 30, 2021. The Federal In-Kind Program ended a year later, on September 30, 2022.

The objective of the rule is to remove the Federal Helium System requirements from the FAR to comply with the statutory direction.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

This rule applies to all solicitations and contracts for the procurement of helium. The final rule removes all of the procedures and reporting requirements associated with helium procurements currently in the FAR. Procurements for helium shall be conducted using the most appropriate methods in the FAR. The rule is not expected to impact a significant number of entities.

According to data from the Bureau of Land Management, there were approximately seven remaining entities participating in the Federal In-Kind Program in calendar year 2020. Data obtained from the System for Award Management as of June 14, 2022, indicates that of those seven entities, there are no small entities participating in the Federal In-Kind Program.

This final rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities. Rather, this rule removes current reporting and compliance requirements for small entities.

There are no known significant alternative approaches to the final rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Helium Stewardship Act of 2013 (Pub. L. 113-40) required the disposal of the Federal Helium System by September 30, 2021. The operation of the Federal Helium Reserve has ended, and agencies now procure helium on the open market as they do for other requirements. OMB Control Number 9000-0113, Acquisition of Helium, was discontinued. Therefore, this rule does not contain information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Action (44 U.S.C. 3501-3521).

List of Subjects in 48 CFR Parts 1, 8, 51, and 52

Government procurement.

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Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 8, 51, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 8, 51, and 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. In section 1.106 amend the table by removing FAR segment "8.5" and the corresponding OMB Control Number "9000-0113".

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.003 [Amended]

3. Amend section 8.003 by removing paragraph (e).

Subpart 8.5 [Removed and Reserved]

4. Remove and reserve subpart 8.5, consisting of sections 8.500 through 8.505.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

5. Amend section 51.102 by—

- a. Removing from the end of paragraph (c) (3) "20420;" and adding "20420; or" in its place;
- b. Removing paragraph (c) (4);
- c. Redesignating paragraph (c) (5) as paragraph (c) (4);

d. Removing from the newly redesignated paragraph (c) (4) the words “(1) through (4) above” and adding the phrase “paragraphs (c) (1) through (c) (3) of this section” in its place;

e. Removing from the end of paragraph (e) (3) (i) the word “DoD;” and adding “DoD; and” in its place;

f. Removing from the end of paragraph (e) (3) (ii) the word “and”; and

g. Removing paragraph (e) (3) (iii).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208-8 [Removed and Reserved]

6. Remove and reserve section 52.208-8.

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